

IDAHO TRANSPORTATION DEPARTMENT PROFESSIONAL SERVICES AGREEMENT

THIS AGREEMENT is made and entered into this _____ day of _____, 20____, by and between the Idaho Transportation Department, whose address is 3311 West State Street, P.O. Box 7129, Boise, Idaho, hereinafter called the "State," and >, whose address is >, hereinafter called the "Consultant."

NOW, THEREFORE, the parties hereby agree as follows:

The work covered by this Agreement is for the following project:

PROJECT NAME: >
PROJECT NO: >
KEY NO: >

I. SUBCONSULTANTS

The State approves the Consultant's utilization of the following Subconsultants: >

II. AGREEMENT ADMINISTRATION

This Agreement shall be administered by >, Idaho Transportation Department, District >, >; or an authorized representative.

III. DUTIES AND RESPONSIBILITIES OF CONSULTANT

A. DESCRIPTION OF WORK

The Consultant shall provide professional > services as outlined in the attachment(s) and as further described herein.

1. The following attachments are made a part of this Agreement:

- a. **Attachment No. 1.** Attachment No. 1 is the negotiated Scope of Work with design assumptions, Schedule, Man Day Estimate, Estimator Specifications, and Consultant CADD Specifications.
- b. **Attachment No. 2.** Attachment No. 2 is the Consultant Agreement Specifications which are generic to all agreements.

In the case of discrepancy, this Agreement shall have precedence over Attachment No. 1, and Attachment No. 1 shall have precedence over Attachment No. 2.

2. Aerial photography negatives and other items as identified in Section I,

Paragraph 9 of the Consultant Agreement Specifications shall be sent to Greg Mead, Idaho Transportation Department, P.O. Box 7129, Boise, ID 83707.

IV. DUTIES AND RESPONSIBILITIES OF STATE

The State shall provide to the Consultant, upon request, copies of any records or data on hand which are pertinent to the work under this Agreement.

V. TIME AND NOTICE TO PROCEED

- A. The Consultant shall start work under this Agreement no later than ten (10) calendar days from the receipt of the written NOTICE TO PROCEED. The Consultant shall complete all the milestones by the dates set out below:

Milestone - Stage I	Date
Concept Approval	
Environmental Document Draft	
Preliminary Survey	
Concept Alignment	
Concept Report	
Phase I Materials Report	
Milestone - Stage II	Date
Design Approval	
Environmental Document	
Design/Public Hearing	
Preliminary Design Review	
Final Design Review	
Right of Way Acquisition	
PS&E	

(All negotiated milestones (and intermediate milestones) shall be defined and their respective dates shown in the table above.)

- B. The Consultant will remain on call during the construction phase of this project to provide designer related services as requested by the State. The construction completion date is estimated to be _____.

The Consultant shall remain available to perform additional work for an additional _____ days or until the Agreement is closed out whichever comes first.

VI. BASIS OF PAYMENT

- A. The basis of payment for this Agreement is **(cost, cost plus fixed fee, or lump sum)** with an Agreement amount of > Dollars (\$>). The amount is made up of a \$> **(Not-to-Exceed or lump sum)** amount for performing all project development services,

plus a \$ > additional services amount set up to perform extra work as requested by the State. The Consultant agrees to accept as full compensation for all services rendered to the satisfaction of the State for the accomplishment of the project development, the **actual cost plus the fixed fee or Not-to-Exceed Amount of \$> whichever is the lesser; Lump Sum amount of \$>**. The Consultant will receive payment under the additional services amount of this Agreement only if the State requests additional services, negotiates payment, and issues a PSA for the additional services.

B. Fee

1. Cost Plus Fixed Fee Amount. The fixed fee shall be >.
2. Additional Services Amount. When additional services are authorized, the fee shall be negotiated.

C. Combined Overhead

1. Consultant, >. The combined overhead rate is > percent.
2. Subconsultant, >. The combined overhead rate is > percent.
3. Subconsultant, >. The combined overhead rate is > percent.

D. Reasonable increases in labor rates during the life of this Agreement will be accepted. Payroll additive rate, general administrative overhead rate, and unit prices are subject to adjustment during the life of this Agreement based on audit and negotiations. If the State approves an adjustment to the overhead rate or unit prices, the Consultant must then submit a written request to the Agreement Administrator requesting use of the approved rate(s) on this agreement. If the new rate(s) are accepted by the Agreement Administrator, they shall apply from the date the written request was made to the Agreement Administrator. An adjustment shall not change the Not-To-Exceed amount of the Agreement. For projects of duration greater than two years, the Not-To-Exceed amount may be negotiated.

In no case will rates be adjusted more than once per agreement year.

E. PSA No. 1 is issued in the amount of \$> to begin the work of this Agreement. The remaining amount will be issued by consecutive PSAs.

IN WITNESS WHEREOF, the Parties hereto have set their hands on the day and year in this Agreement first written above.

IDAHO TRANSPORTATION DEPARTMENT

Approved By ITD

Legal Counsel
Patrick W. Fanning
Deputy Attorney General
March 20, 2003

By: _____
Assistant Chief Engineer (Development)

>

By: _____

Title: _____

:filename

ATTACHMENT NO. 2 CONSULTANT AGREEMENT SPECIFICATIONS

These specifications supplement all Professional and Term agreements and shall be attached to said agreements.

A. DEFINITIONS

1. **Administrator:** Person directly responsible for administering a consultant agreement on behalf of the State or a Local Public Agency.
2. **Combined Overhead:** The sum of the payroll additives and general administrative overhead expressed as a percent of the direct labor cost.
3. **Cost:** Cost is the sum of the hourly charge out rate and other direct costs.
4. **Cost Plus Fixed Fee:** Cost Plus Fixed Fee is the sum of the payroll costs, combined overhead, and other direct costs, plus the fixed fee.
5. **CPM:** Critical Path Scheduling. The CPM will list all work tasks, their durations, negotiated milestones and their dates, and all State/Local review periods.
6. **Fixed Fee:** A dollar amount established to cover the Consultant's profit and business expenses not allocable to overhead. The fixed fee is based on a negotiated percent of direct labor cost and combined overhead and shall take into account the size, complexity, duration, and degree of risk involved in the work. The fee is "fixed," i.e. it does not change. If extra work is authorized, an additional fixed fee can be negotiated, if appropriate.
7. **General Administrative Overhead (Indirect Expenses):** The allowable overhead (indirect expenses) expressed as a percent of the direct labor cost.
8. **Hourly Charge Out Rate:** The negotiated hourly rate to be paid to the Consultant which includes all overhead for time worked directly on the project.
9. **Incentive/Disincentive Clause:** Allows for the increase or decrease of total agreement amount paid based on factors established in the agreement. Normally, these factors will be completion time and completion under budget.
10. **Lump Sum:** An agreed upon total amount, that will constitute full payment for all work described in the Agreement.
11. **Milestones:** Negotiated portions of projects to be completed within the negotiated time frame. Normally the time frame will be negotiated as a calendar date, but it could also be "working" or "calendar" days. As many milestones as the Consultant and the State believe necessary for the satisfactory completion of the agreement will be negotiated.
12. **Not-To-Exceed Amount:** The Agreement amount is considered to be a Not-to-Exceed amount, which amount shall be the maximum amount payable and shall not be exceeded unless adjusted by a Supplemental Agreement.
13. **Other Direct Costs:** The out-of-pocket costs and expenses directly related to the project that are not a part of the normal company overhead expense.
14. **Payroll Additives:** All payroll additives allocable to payroll costs such as FICA, State Unemployment Compensation, Federal Unemployment Compensation, Group Insurance, Workmen's Compensation, Holiday, Vacation, and Sick Leave. The payroll additive is

- expressed as a percent of the direct labor cost.
15. **Payroll Costs (Direct Labor Cost):** The actual salaries paid to personnel for the time worked directly on the project. Payroll costs are referred to as direct labor cost.
 16. **Per Diem Rates:** Per Diem will be reimbursed at the current approved rates. The current rates are listed on the following Web site:
<http://www.itd.idaho.gov/design/cau/policies.htm>.
 17. **State:** Normally "State" refers to the Idaho Transportation Department. However, in the case of Local Sponsor projects, "State" may be interchangeable with "Agreement Administrator" or just "Administrator".
 18. **Unit Prices:** The allowable charge out rate for units or items directly related to the project that are not a part of the normal overhead expense.

NOTE: All cost accounting procedures, definitions of terms, payroll cost, payroll additives, general administrative overhead, direct cost, and fixed fee shall comply with Federal Acquisition Regulations, 48 CFR, Part 31, and be supported by audit accepted by the State.

B. STANDARD OF PERFORMANCE

The Consultant agrees that all work performed under agreement will be performed professionally in accordance with Idaho Transportation Department Standards and other appropriate standards. When the work is of a nature that requires checking, the checking shall be performed by a qualified person other than the one who performed the work.

C. AGREEMENT ADMINISTRATOR

The Agreement Administrator will administer this agreement for performance and payment, and will decide all questions which may arise as to quality and acceptability of the work, rate of progress, definition of work to be performed completion of milestones, and acceptable fulfillment of this Agreement. The Consultant shall address all correspondence, make all requests, and deliver all documents to the Administrator. The Administrator shall be responsible for the timely coordination of all reviews performed by the State or their representatives.

D. SUBCONSULTANTS

The Consultant shall have sole responsibility for the management, direction, and control of each Subconsultant and shall be responsible and liable to the State for the satisfactory performance and quality of work performed by Subconsultants under the terms and conditions of this Agreement. The Consultant shall include all the applicable terms and conditions of this Agreement in each Subconsultant Agreement between the Consultant and Subconsultant, and provide the State with a copy of each Subconsultant Agreement prior to the Subconsultant beginning work. No other Subconsultant shall be used by the Consultant without prior written consent by the State.

E. PROFESSIONAL SERVICES AUTHORIZATION

1. A written PROFESSIONAL SERVICES AUTHORIZATION (PSA) will be issued by the State to authorize the Consultant to proceed with a specific portion of the work under this Agreement. The number of PSAs required to accomplish all the work under this Agreement is one to several. Each PSA will authorize a maximum dollar amount and specify the milestone(s) for which the PSA represents. The State assumes no obligation of any kind for expenses incurred by the Consultant prior to the issuance of the PSA; for any expenses incurred by the Consultant for services performed outside the work authorized by the PSA; and for any dollar amount greater than authorized by the PSA.
2. The work of this Agreement will be divided into milestones, each governed by a separate PSA. It is not necessary for a PSA to be completed prior to the issuance of the next PSA.

The Consultant shall not perform work which has not been authorized by a PSA. When the money authorized by a PSA is nearly exhausted, the Consultant shall inform the Administrator of the need for the next PSA. The Administrator must concur with the Consultant prior to the issuance of the next PSA.

3. The Agreement amount is lump sum, unit cost, or cost plus fixed fee amount for the negotiated services and may include an additional services amount set up for possible extra work not contemplated in original scope of work. For the Consultant to receive payment for any work under the additional services amount of this Agreement, said work must be performed under a PSA issued by the State. Should the State request that the Consultant perform additional services, then the scope of work and method of payment will be negotiated. The basis of payment for additional work will be set up either as a Lump Sum or Cost Plus Fixed Fee.

F. PROJECT SCHEDULING

All negotiated agreements shall be accompanied by a critical path method schedule (CPM Scheduling). The CPM will list all work tasks, their duration, negotiated milestones and their completion dates, including all State/Local review periods. The format of this schedule shall be agreed on prior to signing the agreement.

Along with the monthly progress report, the Consultant shall provide monthly CPM Schedule updates to the Agreement Administrator showing the project percent completed on each task.

G. MONTHLY PROGRESS REPORT

The Consultant shall submit to the State a monthly progress report on Form ITD-771, as furnished by the State.

The Consultant shall provide monthly progress schedule (**CPM**) updates to the Agreement Administrator.

The monthly progress report and schedule update will be submitted by the tenth of each month following the month being reported or as agreed upon in the scope of work.

The Agreement Administrator will review the progress report and submit approved billings for payment within two weeks of receiving monthly report.

Each progress report shall list billings by PSA number and reference milestones.

H. PROGRESS AND FINAL PAYMENTS

1. Progress payments will be made once a month for services performed which qualify for payment under the terms and conditions of the Agreement. Such payment will be made based on invoices submitted by the Consultant in the format required by the State. The monthly invoice shall be submitted by the tenth of each month following the month being invoiced.

Lump Sum

Progress payments will be made, based on a percentage of the work or milestones satisfactorily completed.

Cost Plus Fixed Fee

The Consultant shall submit a breakdown of costs by each item of work on the monthly invoice, and shall show the percent complete of each item of work, each milestone and percent complete of the entire Agreement. Progress payments will be made based on the invoiced cost less the fixed fee for the work satisfactorily completed for each billing period. Said payment shall not exceed the percent complete of the entire Agreement. Upon satisfactory completion of

each milestone, full payment for all approved work performed for that milestone will be made including Fixed Fee.

Cost

The Consultant shall submit a breakdown of costs by each item of work on the monthly invoice, and shall show the percent complete of each item of work and percent complete of the entire Agreement. Progress payments will be made based on the invoiced cost for the work satisfactorily completed for each item of work. Said payment shall not exceed the percent complete of the entire Agreement.

2. The State will make full payment for the value of the services performed which qualify for payment. This full payment will apply until 95 percent of the work under each Project Agreement or Work Task has been completed. No further progress payments will be made until all work under the individual agreement has been satisfactorily accomplished. If at any time, the State determines that the work is not progressing in a satisfactory manner, the State may refuse to make full progress payments and may withhold from any progress payment(s) such sums that are deemed appropriate for unsatisfactory services.
3. Final payment of all amounts retained shall be due 90 days after all work under the Agreement has been completed by the Consultant and accepted by the State. Such final payment will not be made until satisfactory evidence by affidavit is submitted to the State that all indebtedness incurred by the Consultant on this project has been fully satisfied.
4. Agreements which include an incentive/disincentive clause will normally have the clause applied only to the completion of the BID OPENING milestone. If the project is deemed by the State to be ready for advertisement, but advertisement is postponed at no fault of the consultant, any incentive earned will be paid.
5. Payments to Subconsultants

The Consultant shall pay each subconsultant for satisfactory performance of its contract items no later than twenty (20) calendar days from receipt of each payment the consultant receives from the State, in accordance with 49 CFR, Part 26. The consultant shall return retainage payments to each subconsultant within twenty (20) calendar days after the subconsultant's work is satisfactorily completed. The Consultant shall certify that payment to each subconsultant has been made on certification form ITD-2892 provided by the State.

I. MISCELLANEOUS PROVISIONS

1. COVENANT AGAINST CONTINGENT FEES

- a. The Consultant warrants that they have not:

Employed or retained for a commission, percentage, brokerage, contingent fee, or other consideration, any firm or person to solicit or secure this contract, other than a bona fide employee of the firm;

agreed, as an expressed or implied condition for obtaining this contract, to employ or retain the services of any firm or person in connection with carrying out the contract, or;

paid, or agreed to pay, to any firm, organization or person (other than a bona fide employee of the firm) any fee, contribution, donation, or consideration of any kind for, or in connection with, procuring or carrying out the contract.

- b. The State warrants that the above consulting firm, or firm representative, has not

been required, directly or indirectly as an expressed or implied condition in connection with obtaining or carrying out this contract to:

Employ or retain, or agree to employ or retain, any firm or person, or; pay, or agree to pay to any firm, person or organization, any fee, contribution, donation or consideration of any kind.

2. PROHIBITION AGAINST HIRING PERSONNEL AND WORKING FOR CONTRACTOR

In compliance with the Code of Federal Regulations, (23 CFR, Section 1.33, Conflict of Interest), the Consultant agrees that no one in their employ will work on a part time basis under this Agreement while also in the full-time employ of any Federal Agency or the State, without the written consent of the public employer of such person. The Consultant agrees that no one in their employ under any circumstances shall perform any services for the contractor on the construction of this project. This includes employees who leave the Consultant's employment.

3. CHANGES IN WORK

All changes in work shall conform to one or more of the following conditions and in no instance shall such change in work be undertaken without written order or written approval of the State.

- a. Increase in the work required by the State due to unforeseen circumstances.
- b. Revision in the work required by the State subsequent to acceptance of such work at the appropriate conference or after revision of such work as outlined at said conference.
- c. Items of work which are beyond the scope of intent of this Agreement and pre-approved by the State.
- d. Reduction in the work required by the State due to unforeseen circumstances.

An increase in compensation shall not result from underestimating the complexity of the work.

Adjustment in compensation for either an increase or reduction in work shall be on a negotiated basis arrived at by mutual agreement between the State and the Consultant. During such negotiations the State may examine the documented payrolls, transportation and subsistence costs paid employees actively engaged in the performance of a similar item or items of work on the project, and by estimated overhead and profit from such similar items or items of work.

Said mutual agreement for a negotiated increase or reduction in compensation shall be determined prior to commencement of operations for an increase in a specific item or items of work. In the case of State order for nonperformance a reduction in the specific item or items of work will be made as soon as circumstances permit. In the event that a mutual agreement is not reached in negotiations for an increase in work, the State will use other methods to perform such item or items of work.

The mutually agreed amount shall be covered by a Supplemental Agreement and shall be added to or subtracted from the total amount of the original Agreement.

Adjustment of time to complete the work as may pertain to an increase or a reduction in the work shall be arrived at by mutual agreement of the State and the Consultant after study of the change in scope of the work.

4. DELAYS AND EXTENSIONS

- a. Extensions of time may be granted for the following reasons:
 - i. Delays in major portions of the work caused by excessive time used in processing of submittals, delays caused by the State, or other similar items which are beyond the control of the Consultant.
 - ii. Additional work ordered in writing by the State.
- b. Extensions of time will not be granted for the following reasons:
 - i. Underestimating complexity of work.
 - ii. Redoing work rejected by the State.

5. TERMINATION

The State may terminate or abandon this Agreement at any time, without further obligation, upon giving notice of termination hereof as hereinafter provided, for any of the following reasons:

- a. Evidence that progress is being delayed consistently below the progress indicated in a schedule of operations given to the State at meetings and conferences herein provided for.
- b. Continued submission of sub-standard work.
- c. Violation of any of the terms of conditions set forth in the Agreement, other than for the reasons set forth in a. and b. above.
- d. At the convenience of the State.

Prior to giving notice of termination for the reasons set forth in a and b above, the State shall notify the Consultant in writing of any deficiencies or default in performance of the terms of this Agreement, and said Consultant shall have ten (10) days thereafter in which to correct or remedy such default or deficiency. Upon their failure to do so within said ten (10) days, or for the reasons set forth in c above, such notice of termination in writing shall be given by the State. Upon receipt of said notice the Consultant shall immediately discontinue all work and service unless directed otherwise, and shall transfer all documents pertaining to the work and services covered under this Agreement, to the State. Upon receipt by the State of said documents, payment shall be made to Consultant as provided herein for all acceptable work and services.

6. DISPUTES

Should any dispute arise as to performance or abnormal conditions affecting the work, such dispute shall be referred to the Director of the Idaho Transportation Department or his duly authorized representative(s) for determination.

Such determination shall be final and conclusive unless, within thirty (30) days of receipt of the decision Consultant files for arbitration with the American Arbitration Association (AAA). Consultant agrees that any arbitration hearing shall be conducted in Boise, Idaho. Consultant and State agree to be bound by the decision of the arbitration. Expenses incurred due to the arbitration will be shared equally by the parties involved.

7. ACCEPTANCE OF WORK

- a. The Consultant warrants that all work submitted shall be in accordance with good

professional practices and shall meet tolerances of accuracy required by State practices and procedures.

- b. Acceptance of work will occur at phases appropriate to the terms of the agreement and level of detail required by the State in its project development procedures.
- c. It is understood by the Consultant that the State is relying upon the professional expertise and ability of the Consultant in performance of this contract. Any examination of the Consultant's work product by the State will not be considered acceptance or approval of the work product which would relieve the Consultant for any liability or expense. Consultant is solely responsible for the propriety and integrity of its work product.

Acceptance or approval of any portion of Consultant's work product by the State or payment, partial or final, shall not constitute a waiver of any rights the State may have against the Consultant. If due to error, omission or negligence by the Consultant, **or its agents or employees**, in its work product, the Consultant shall make corrections to its work product at no expense to the State. The Consultant shall respond to the State's notice of any error or omission within twenty four hours of receipt, and give immediate attention to any corrections to minimize any delay to the construction contract. This may include, if directed by the State, visits to the site of the work.

If the Consultant discovers errors or omissions in its work product, it shall notify the State within seven days of discovery. Failure of the Consultant to notify the State shall be grounds for termination of the agreement.

The Consultant's liability for damages incurred by the State due to error, omission or negligence by the Consultant in its work product shall be borne by the Consultant. Increased construction costs resulting from errors, omissions or negligence in Consultant's work product shall not be the Consultant's responsibility unless the additional construction costs were the result of gross negligence or carelessness of the Consultant.

8. OWNERSHIP OF DOCUMENTS

All material acquired or produced by the Consultant in conjunction with the preparation of the plans, study, or report, shall become the property of, and be delivered to, the State without restrictions or limitations of their further use. However, in any case, the Consultant has the right to make and retain copies of all data and documents for project files. All material acquired or produced by the Consultant under this contract may be public records under the Idaho Public Records Act. Reference Idaho Code Section 9-338(9).

9. AERIAL PHOTOGRAPHY

After aerial photography has been flown, processed and checked for coverage, the negatives shall be sent to the State at the address indicated on the agreement for evaluation, labeling, and prints or diapositives as needed by the District and the Consultant. The negatives shall become the property of the State. Along with the negatives, the Consultant shall also deliver the Report of Calibration for the aerial camera used for the aerial photography, the flight maps, and the flight log. Once complete, a copy of the mapping shall be placed on a CD-ROM and sent to the address specified in the agreement.

10. GEOTECHNICAL AND MATERIALS WORK

If geotechnical and materials work is required under this Agreement, the consultant must

ensure that any subconsultant performing geotechnical and materials work be involved in the final design review. This does not mean that the geotechnical and materials subconsultant must attend the actual final design review meeting, but does mean that the subconsultant, will at a minimum, participate in the final design plans and proposal review to assure that all geotechnical and materials recommendations/issues it raised concerning the project have been addressed, or notify the consultant of any outstanding issues.

11. HIGHWAY CONSTRUCTION ESTIMATING PROGRAM

The Idaho Transportation Department has adopted the Trns.Port Estimator™ Highway Construction Cost Estimation software package as the standard for developing all highway construction cost estimates. All consulting engineers who prepare PS&E (Plans, Specifications and Estimate) packages for submittal to ITD are required to use Estimator. Further information is available at the following Web Site: http://www.itd.idaho.gov/design/cau/general_info.htm.

12. INDEMNITY

Concerning claims of third parties, the Consultant and the State to the extent the State may do so will indemnify, save harmless and defend each other from the damages of and against any and all suits, actions, claims or losses of every kind, nature and description, including costs, expenses and reasonable attorney fees that may be incurred by reason of any negligent act, error or omission of the Consultant or the State in the prosecution of the work which is the subject of this Agreement. Concerning claims of the State, the Consultant shall assume the liability and responsibility for negligent acts, errors or omissions caused by the Consultant or their agents or employees to the design, preparation of plans and/or specifications, or other assignments completed under this Agreement, to the standards accepted at the time of the Final Design Review, other established review periods, and until one (1) year after the project construction has been completed. The State shall have until that time to bring a claim for loss against the Consultant.

Notwithstanding any other provision of this Agreement, the Consultant shall not be responsible for claims arising from the willful misconduct or negligent acts, errors, or omissions of the State for contamination of the project site which pre-exist the date of this Agreement or subsequent Task Authorizations. Pre-existing contamination shall include but not be limited to any contamination or the potential for contamination, or any risk to impairment of health related to the presence of hazardous materials or substances. The State agrees to indemnify, defend, and hold harmless the Consultant from and against any claim, liability or defense cost related to any such pre-existing contamination except for claims caused by the negligence, or willful misconduct of the Consultant.

13. INSURANCE

The Consultant, certifying it is an independent contractor licensed in the State of Idaho, shall acquire and maintain comprehensive general liability insurance in the amount of \$500,000.00 per occurrence, professional liability insurance in the amount of \$1,000,000.00 per occurrence, and worker compensation insurance in accordance with Idaho Law. The professional liability insurance coverage shall remain in force and effect for a minimum of one (1) year after acceptance of the work by the State. The Consultant shall provide the State with certificates of insurance within ten (10) days of the Notice to Proceed.

14. ENDORSEMENT BY ENGINEER, ARCHITECT, LAND SURVEYOR, AND GEOLOGIST

Where applicable, the Professional Engineer, Architect, Land Surveyor, or Geologist in direct charge of the work or portion of work shall endorse the same. All plans, specifications, cost summaries, and reports shall be endorsed with the registration seal, signature, and date of the Idaho professional in direct charge of the work. In addition, the

firm's legal name and address shall be clearly stamped or lettered on the tracing of each sheet of the plans. This endorsement certifies design responsibility in conformance with Idaho Code, ITD's Design Manual, and acceptance of responsibility for all necessary revisions and correction of any errors or omissions in the project plans, specifications and reports relative to the project at no additional cost to the State.

15. LEGAL COMPLIANCE

The Consultant at all times shall observe and comply with all Federal, State and local laws, by-laws, safety laws, and any and all codes, ordinances and regulations affecting the work in any manner. The Consultant agrees that any recourse to legal action pursuant to this agreement shall be brought in the District Court of the State of Idaho, situated in Ada County, Idaho.

16. SUBLETTING

The services to be performed under this Agreement shall not be assigned, sublet, or transferred except by written consent of the State. Written consent to sublet, transfer or assign any portions of the work shall not be construed to relieve the Consultant of any responsibility for the fulfillment of this Agreement or any portion thereof.

17. PERMITS AND LICENSES

The Consultant shall procure all permits and licenses, pay all charges, fees, and taxes and give all notices necessary and incidental to the due and lawful prosecution of the work.

18. PATENTS

The Consultant shall hold and save the State and its agents harmless from any and all claims for infringement by reason of the use of any patented design, device, material process, trademark, or copyright.

19. CIVIL RIGHTS ACT

During the performance of work covered by this Agreement, the Consultant for themselves, their assignees and successors in interest agree as follows:

- a. **Compliance With Regulations.** The Consultant shall comply with all regulations of the United States Department of Transportation relative to Civil Rights, with specific reference to Title 49 CFR Part 21, Title VI of the Civil Rights Act of 1964 as amended, and Title 23 CFR Part 230 and Title 49 CFR Part 26 as stated in the ITD Civil Rights Special Provisions.
- b. **Nondiscrimination.** The Consultant, with regard to the work performed by them during the term of this Agreement, shall not in any way discriminate against any employee or applicant for employment; subcontractor or solicitations for subcontract including procurement of materials and equipment; or any other individual or firm providing or proposing services based on race, color, sex, national origin, age or handicap/disability.
- c. **Solicitations for Subcontracts, Including Procurement of Materials and Equipment.** In all solicitations, either by bidding or negotiation, made by the Consultant for work or services performed under subcontract, including procurement of materials and equipment, each potential subcontractor or supplier shall

be made aware by the Consultant of the obligations of this Agreement and to the Civil Rights requirements based on race, color, sex, national origin, age or handicap/disability.

- d. **Information and Reports.** The Consultant shall provide all information and reports required by regulations and/or directives and sources of information, and their facilities as may be determined by the State or the appropriate Federal Agency. The Consultant will be required to retain all records for a period of three (3) years after the final payment is made under the agreement.
- e. **Sanctions for Noncompliance.** In the event the Consultant is in noncompliance with the Civil Rights provisions of this Agreement, the State shall impose such sanctions as it or the appropriate Federal Agency may determine to be appropriate, including, but not limited to:
- Withholding of payments to the Consultant until they have achieved compliance;
 - Suspension of the agreement, in whole or in part, until the consultant or subconsultant is found to be in compliance, with no progress payment being made during this time and no time extension made;
 - Cancellation, termination or suspension of the Agreement, in whole or in part;
 - Assess against the consultant's final payment on this agreement or any progress payments on current or future Idaho Federal-aid Projects an administrative remedy by reducing the final payment or future progress payments in an amount equal to 10% of this agreement or \$7,700, whichever is less.
- f. **Incorporation of Provisions.** The Consultant shall include the provisions of paragraphs a. through e. above in every subcontract of \$10,000 or more, to include procurement of materials and leases of equipment unless exempt by regulations, orders, or directives pursuant thereto. The Consultant shall take such action with respect to any subcontract or procurement as the State or the appropriate Federal Agency may direct as a means of enforcing such provisions, including sanctions for noncompliance. In the event the Consultant becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Consultant may request the State to enter into such litigation to protect the interest of the State, and in addition, the Consultant may request the United States to enter into such litigation to protect the interest of the United States.

20. INSPECTION OF COST RECORDS

The Consultant shall maintain all books, documents, papers, accounting records and other evidence pertaining to costs incurred on the project. They shall make such data available for inspection, and audit, by duly authorized personnel, at reasonable times during the life of this Agreement, and for a period of three (3) years subsequent to date of final payment under this Agreement, unless an audit has been announced or is underway; in that instance, records must be maintained until the audit is completed and any findings have been resolved. Failure to provide access to records may affect payment and may constitute a breach of contract.

21. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

By signing this document the Consultant certifies to the best of his knowledge and belief

that except as noted on an attached Exception, the company or its subcontractors, material suppliers, vendors or other lower tier participants on this project:

- a. Are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency;
- b. have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records making false statements, or receiving stolen property;
- c. are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (b) of this certification; and
- d. have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NOTE: Exceptions will not necessarily result in denial of award, but will be considered in determining Consultant responsibility. For any exception noted, indicate to whom it applies, initiating agency and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.

22. CERTIFICATION CONCERNING LOBBYING ACTIVITIES

By signing this document, the Consultant certifies to the best of their knowledge and belief that:

- a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment or modification of any Federal contract, grant, loan or cooperative agreement.
- b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this Federal contract, grant, loan or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying", in accordance with its instructions.

The Consultant also agrees that he or she shall require that the language of this certification shall be included in all lower tier subcontracts, which exceed \$100,000, and that all such sub-recipients shall certify and disclose accordingly.